[DE] Cable Operator as Broadcaster

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Arena Sportrechte und Marketing GmbH, a 100% subsidiary of the largest cable network operator in North Rhine-Westphalia (Unity Media), has been granted authorisation to operate a national TV channel, "Arena Bundesliga", by the *Landesanstalt für Medien Nordrhein-Westfalen* (North Rhine-Westphalia Media Authority - LFM). However, this decision remains subject to the approval of the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK). The KEK represents the relevant *Land* media authority in licensing procedures and ensures compliance with the provisions designed to safeguard plurality of opinion on television. In such procedures, the KEK decides whether a company obtains a controlling influence over public opinion as a result of the channels it operates, or a change to its ownership structure or both.

This case is unusual because it involves vertical integration. It is the first time an infrastructure operator has also sought to become a content provider. Arena purchased the pay-TV rights to broadcast Bundesliga matches from the German Football League (DFL) in December 2005. Another infrastructure operator, T-Online, a subsidiary of Deutsche Telekom AG, acquired the equivalent Internet rights.

At its meeting on 31 January 2006, the *Direktorenkonferenz der Landesmedienanstalten* (Conference of Directors of the *Land* Media Authorities - DLM) discussed the media law consequences of the sale of German Bundesliga broadcasting rights to cable network operators. It stressed that a broadcasting licence was required to transmit Bundesliga matches via telephone networks (DSL and mobile networks). The concept of broadcasting was made up of elements such as its widespread impact, influence on opinion and topicality; due to technical advances, the same now applied to transmissions via telephone networks. With regard to the rights acquired by T-Online, the DLM also pointed out that if Deutsche Telekom or one of its subsidiaries were to provide a service that required a licence, the latter's 37% share in Deutsche Telekom would throw open the question of whether it was entitled to a licence.

Finally, in the DLM's opinion, access to the respective platform should also be available to other operators, in case the network operators should link the Bundesliga service with other content and telecommunications services. The minimum requirements in this respect were the disclosure of the conditions and a

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clear separation of broadcasting and telecommunications activities, in order to guarantee access without discrimination.

Pressemitteilung der LFM vom 10. März 2006

http://www.lfm-nrw.de/presse/index.php3?id=396#2

Press release of the LFM of 10 March 2006

Pressemitteilung der DLM vom 1. Februar 2006, abrufbar unter:

http://www.alm.de/index.php?id=34&backPid=67&tt_news=331&cHash=0b57b9796f

Press release of the DLM of 1 February 2006

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